Skate Park Issues

1. The Cities skate park architect/design firm should be held to be the expert in developing a park that presents a low potential for loss or injury, while at the same time providing an attractive and challenging level of activity for all park users. Your architect/design firm should spell out the features of their design that justify the depths of bowls without an increase in exposure to loss or injury. The architect/designer should be able to justify/defend their design as a beginner to intermediate facility. Keep in mind we should not be presenting the public with an "extreme" park as requested by some of the users, because it could exceed the capabilities of all but a small segment of the population.

2. The architect/design firm should be asked to address the age/skill appropriateness of their design. This will create an opportunity to put in place design changes or operational controls to address the variation between the design and the ages/skill of the children exposed.

3. The city attorney should be asked for input on the immunity afforded for injured children over the age of 14 and the methods of addressing the needs of children under 14. (Some cities have been successful in obtaining waivers from parents of all minors using the facility.) Reference Code: Government Code Section 831.7. See attached Appendix 1 titled "Hazardous Recreational Activity."

4. You should obtain certificates of insurance from the contractor/architect/design firm of at least $2 million for professional liability/errors and omissions insurance coverage. The contractor should provide general liability completed operations limits of at least $1 million. In addition, your contract with the contractor/architect/design firm should include provisions to indemnify the city and hold the city harmless in the event of claims arising out of the design and construction of the park. You should be named as an additional insured on their insurance policies.

5. Experience with skateboard parks in some cities shows that fence maintenance may be an issue. Your operating plan should address an aggressive fence maintenance policy to reduce the potential for trespassing.

6. The City should have strict safety rules based on city ordinance and enforced by city police or others. These rules should include the requirement for a helmet, elbow pads, and kneepads, operating hours, direction of travel, and prohibition of bicycles, including BMX bikes. Signage should include a warning relative to the inherently hazardous nature of the activity. Reference Code: Government Code Section 831.7 and Health and Safety Code Section 115800 (Appendix 2).

7. The city attorney should be asked for guidance in the number of languages needed for the signs with the park rules. Reference Code: Government Code Section 831.7.

8. Your rules must be enforced, and your enforcement history should be maintained and readily available in the event of litigation.

9. A specific policy on graffiti tagging should be developed. In no case should tagging (or the painting over of tagging) be permitted on the skating surface.

10. A skating surface cleaning policy should be developed to include a tagging removal policy that is in accordance with the design specifications set by the contractor/architect/designer.

11. A litter control policy should be developed to reduce the potential for debris on the park skating surface. Your design should address the need to keep debris-producing exposures, including landscape bark, at least 10 feet from the skating surface with an adequate barrier to reduce the potential for wind-blown debris.

12. Emergency 911 notification facilities should be immediately available to park participants at all times.

13. Park maintenance plans should be reviewed by the architect/designer to assure appropriate plans are in place to maintain the skating surface. A permanent record of all maintenance actions should be maintained by the city.

14. A park inspection plan should be developed and followed to identify potential hazards. Those persons doing the inspection should be specifically trained in the issues facing skateboarders and how to identify hazards. The inspection reports and the record of corrective actions should be maintained permanently by the city.

15. The architect/designer should determine the maximum capacity of the park. Provisions should be made to address overcrowding.

16. The need for traffic flow direction indicators should be addressed by your architect/designer and appropriate action taken to address the potential for collisions.

17. The architect/designer should be asked to address the appropriateness of combining skateboarders and in-line skaters in the same facility. Provisions should be made to address potential conflicts.

18. Bicycles should be excluded from the facility unless the designer/architect verifies the suitability for bicycles, and then only for specifically authorized bicycle only activities.

19. From a risk management perspective, a lighted facility will be used more hours per day resulting in an increased exposure. There are many other aspects to lighting/not lighting including the impact on the skateboarders' ability to see changes in terrain and the potential for increased vandalism and crime. If the city decides to install lighting, a good risk control initiative would be to set specific hours of operation, and lock the gates after hours. This will limit the use and at the same time make the park visible to police and neighbors to control crime. Any changes in your lighting/security plan should be reviewed in light of the increased use exposure, the user visibility issues, and the crime issues.

20. Your city attorney should be asked to address the design immunity issues relative to California Government Code 830.6 and the need for action by the city council. See attached Appendix 3 titled "Design Immunity."

Appendix 1

Hazardous Recreational Activity

CALIFORNIA CODES: GOVERNMENT CODE SECTION 831.7

831.**7**. (a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.

(b) As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.

"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given.

(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, mountain bicycling, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, paragliding, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging, waterskiing, white water rafting, and windsurfing. For the purposes of this subdivision, "mountain bicycling" does not include riding a bicycle on paved pathways, roadways, or sidewalks.

(c) Notwithstanding the provisions of subdivision (a), this section does not limit liability which would otherwise exist for any of the following: (1) Failure of the public entity or employee to guard or warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the hazardous recreational activity out of which the damage or injury arose.

(2) Damage or injury suffered in any case where permission to participate in the hazardous recreational activity was granted for a specific fee. For the purpose of this paragraph, a "specific fee" does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific hazardous recreational activity out of which the damage or injury arose.

(3) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose.

(4) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity. For purposes of this paragraph, promotional literature or a public announcement or advertisement which

merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

(5) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury. Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

Appendix 2

Health and Safety Code

CALIFORNIA CODES: HEALTH AND SAFETY CODE SECTION 115800

115800. (a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and knee pads.

(b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads, and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

(c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.

(d) (1) Skateboarding at any facility or park owned or operated by a public entity as a public skateboard park, as provided in paragraph (3), shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government **Code** if all of the following conditions are met:

(A) The person skateboarding is 14 years of age or older.

(B) The skateboarding activity that caused the injury was stunt, trick, or luge skateboarding.

(C) The skateboard park is on public property that complies with subdivision (a) or (b).

(2) In addition to the provisions of subdivision (c) of Section 831.7 of the Government **Code**, nothing in this section is intended to limit the liability of a public entity with respect to any other duty imposed pursuant to existing law, including the duty to protect against dangerous conditions of public property pursuant to Chapter 2 (commencing with Section 830) of Part 2 of Division 3.6 of Title 1 of the Government **Code**. However, nothing in this section is intended to abrogate or limit any other legal rights, defenses, or immunities that may otherwise be available at law.

(3) For public skateboard parks that were constructed on or before January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2001. For public skateboard parks that are constructed after January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2008. For purposes of this subdivision, any skateboard facility that is a movable facility shall be deemed constructed on the first date it is initially made available for use at any location by the local public agency.

(4) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by a skateboarder in a public skateboard park or facility. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2007, on the incidences of injuries incurred, claims asserted, and the results of any lawsuit filed, by persons injured while skateboarding in public skateboard parks or facilities.

(5) This subdivision shall not apply on or after January 1, 2001, to public skateboard parks that were constructed on or before January 1, 1998, but shall continue to apply to public skateboard parks that are constructed after January 1, 1998.

(e) This section shall remain in effect until January 1, 2008, and as of that date is repealed, unless a later enacted statute, enacted before January 1, 2008, deletes or extends that date.

115800. (a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and knee pads.

(b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and knee pads, and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

(c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.

(d) This section shall become operative on January 1, 2008.

Appendix 3

Design Immunity

CALIFORNIA CODES: **GOVERNMENT CODE** SECTION **830.6**

830.**6**. Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which (a) a reasonable public employee could have adopted the plan or design or the standards therefor or (b) a reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor. Notwithstanding notice that constructed or improved public property may no longer be in conformity with a plan or design or a standard which reasonably could be approved by the legislative body or other body or employee, the immunity provided by this section shall continue for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out remedial work necessary to allow such public property to be in conformity with a plan or design approved by the legislative body of the public entity or other body or employee, or with a plan or design in conformity with a standard previously approved by such legislative body or other body or employee. In the event that the public entity is unable to remedy such public property because of practical impossibility or lack of sufficient funds, the immunity provided by this section shall remain so long as such public entity shall reasonably attempt to provide adequate warnings of the existence of the condition not conforming to the approved plan or design or to the approved standard. However, where a person fails to heed such warning or occupies public property despite such warning, such failure or occupation shall not in itself constitute an assumption of the risk of the danger indicated by the warning.